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July 9, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Portals II
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Application of SBC Communications, Inc. and Ameritech Corporation for Authority To Transfer Control of Certain Licenses and Authorizations, CC Docket No. 98-141 – Written Ex Parte Presentation

Dear Ms. Salas:

By this letter, Ameritech Corporation ("Ameritech") and SBC Communications Inc. (collectively, the "Applicants") respond to the June 16, 1999 ex parte submission ("Comments") of the Indiana Utility Regulatory Commission ("IURC").

Although the IURC specifically stated that it "cannot comment on whether the merger should be approved" (Comments at 19), it raised four broad sets of issues that cast Ameritech Indiana in a negative light and can only be designed to prejudice the Commission against approval of the Applicants' merger at the eleventh hour. We note as a preliminary matter that a majority of the issues are irrelevant to the subject license transfer proceeding, as the Commission has recognized in other contexts, and fully within the jurisdiction of the IURC. Nonetheless, we address each of these issues below and point out the most important factual misstatements and assorted mischaracterizations in the IURC's filing.

No. of Copies rec'd 0+1
List A B C D E

I. Ameritech Indiana Does Not Resist State Regulation

The IURC's first allegation is that Ameritech Indiana actively resists state regulation and that its "extensive use of litigation has appreciably delayed competitive entry here in Indiana." Comments at 3.

Before addressing the IURC's three specific examples purporting to demonstrate Ameritech Indiana's litigious nature, an obvious proposition should be restated: the fact that Ameritech Indiana has chosen to exercise its constitutional rights is not tantamount to resisting state regulation. As this Commission has repeatedly recognized, such activity constitutes "constitutionally protected free speech" that is not the proper subject of scrutiny in a merger proceeding.[1]

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[1] Application of Pacific Telesis Group and SBC Communications Inc., Memorandum Opinion and Order, 12 FCC Rcd 2624, ¶ 37 (1997) ("SBC/Telesis"). In fact, the major IXCs have also engaged in extensive state and federal litigation in Indiana and the other Ameritech states concerning the rules governing access lines, interconnection to their networks and the decisions of state arbitrators. *See, e.g., MCI Telecommunications Corp. v. Indiana Bell*, Case No. 93A02-9803-EX-00204 (Ct. App. Ind. 1998) (unsuccessful appeal by MCI of intrastate PICC change order in IURC universal service docket); *Indiana Bell v. IURC*, Case No. IP97-0662-C-B/S (S.D. Ind., July 1, 1998) (court dismissed AT&T counterclaims in appeal of IURC arbitration order); *AT&T v. Indiana Bell*, Case No. 93A02-9805-EX-00438 (Ct. App. Ind., filed May 18, 1998) (appeal of IURC access charge order, withdrawn by AT&T); *MCI Telecommunications Corp. v. Illinois Bell*, Case No. 97-C-2225 (N.D. Ill. 1997) (appeal of IURC arbitration decision); *MCI Telecommunications Corp. v. Michigan Bell Telephone Co.*, Case No. 97-74362 (E.D. Mich) (pending appeal of Michigan PSC arbitration decision); *MCI Telecommunications Corp. v. Wisconsin Bell, Inc.*, Case No. 98-C-153-C (W.D. Wisc., filed Jan. 7, 1998) (appeal of Wisconsin PSC arbitration decision); and *AT&T*

(continued...)

Moreover, the IURC's argument (Comments at 6) that Ameritech Indiana's litigation posture delays competition is subject to challenge on at least three grounds. First, the IURC's perception concerning the state of competition in Indiana is neither current nor complete (see infra pp. 12-15). Second, the notion that the filing of a lawful appeal deters competition cannot withstand scrutiny. The IURC's argument ignores the fact that IURC orders remain in full force and effect absent a stay (see IC 8-1-3-6, attached as Exhibit 1) and that no stays have been entered in any of the cases cited by the IURC. Finally, all the evidence shows that Ameritech treats CLECs in Indiana just as well as it treats CLECs in its other states, so there should be equal incentives for CLECs to enter Indiana residential markets. In short, the IURC's argument selectively ignores both law and economic logic. We also address below the factual shortcomings of the argument.

A. Opportunity Indiana (Cause Nos. 39705 and 40849)

The IURC focuses first on Opportunity Indiana, the alternative price cap regulatory framework that went into effect in 1994. Comments at 4. When Opportunity Indiana expired a year and a half ago, the IURC adopted an interim alternate regulatory plan that required Ameritech Indiana to reduce its local exchange rates by 4.6%. Ameritech timely appealed this order. [2] As the IURC notes, this

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[1] (...continued)
Communications of Ohio Inc. v. Schriber, Case No. C2-99-414 (S.D. Ohio 1999) (appeal of Ohio PUC order on recovery of intraLATA presubscription costs).

[2] The full merits of Ameritech Indiana's position are set forth in its appellant's brief in that appeal, *Indiana Bell Telephone Co., Inc. v. IURC*, No. 93A02-9801-EX-22 (Ct. App. Ind.) (filed Aug. 27, 1998) (attached as Exhibit 2). That brief also refutes the IURC's insinuation that Ameritech Indiana has filed frivolous appeals to stymie competition.

appeal has been pending before the Indiana Court of Appeals for more than 18 months through no fault of Ameritech.

The IURC suggests that Ameritech Indiana has somehow acted improperly in not reducing its rates while the appeal is pending. Comments at 4. However, the IURC fails to disclose that, pursuant to IC-8-1-3-6, a public utility has the express right to charge and collect the former rate pending a decision on judicial appeal. Again, the legitimate exercise of lawful rights should not be equated with resisting state regulation.

The IURC also claims that Ameritech Indiana has fallen short on the infrastructure investment commitments it made pursuant to the Opportunity Indiana plan. In that plan, Ameritech Indiana committed to provide digital switching and transport facilities to every interested school, hospital and major government center. As Ameritech Indiana explained in complete detail in its Petition for Reconsideration in Cause No. 40849 (attached as Exhibit 3), it has complied with its investment commitments.[3] The IURC's comments ignore evidence submitted by Ameritech Indiana to confirm that it was meeting the express terms of the commitment, which was to provide infrastructure improvements to schools, hospitals and government entities that expressed an interest in such improvements.[4] For example, this evidence addressed the Commission's conclusion that Ameritech Indiana improperly included benefits provided to "grocery stores" and a "hotel." Evidence submitted by Ameritech Indiana showed that:

- The "grocery store" is a K through 12 content provider. The "grocery store" has an educational staff that is developing a healthcare and nutrition curriculum for use by schools. At the request of educators, necessary video equip-

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[3] The petition, minus its many exhibits, is attached hereto as Exhibit 3.

[4] Ameritech Indiana remains fully committed to the infrastructure investment agreed to in ¶ 10b of the Opportunity Indiana Settlement Agreement.

ment was installed at the "grocery store" and the company's local central office for transmission of the curriculum to interested schools

- The "hotel" in question is a facility used by the State of Indiana's Department of Education to train school administrators about state technology grants. In order to qualify for state technology grants, a school must have a technology plan filed with the Department of Education. For the last three years, the Department of Education has held a conference each year at the "hotel" to train school administrators about the Department of Education's technology plan filing process. Again, at the request of educators, Distance Learning technology and fiber was installed at the "hotel" to demonstrate the technology to the administrators and to develop the interest of administrators in participating in the Vision Athena network. Additionally, the conferences are televised via the network to interested schools.[5]

In fact, Ameritech Indiana has affirmatively responded to all hospital, school, university and government organization requests involving services covered by the infrastructure commitments. It has provided fiber optic facilities to every interested school, hospital and major government center in the company's service area. Ameritech Indiana continues to meet with the interested parties in an attempt to resolve any outstanding differences regarding the Opportunity Indiana commitment.

B. Universal Service (Cause No. 40785)

Nor is there any merit to the IURC's argument that Ameritech Indiana has thwarted regulation by filing appeals of the IURC's general investigation into universal service. Comments at 5. Ameritech Indiana has a genuine dispute with the IURC. Ameritech Indiana maintains that the IURC far exceeded the scope of Section 254 and the universal service mandate by, among other things, making

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[5] See Exhibit 3 at 12-15.

"confiscation" a Section 254 issue without any statutory basis therefor and applying Section 254 to *all* services (not just to the "universal services" contemplated in the 1996 Act). Ameritech Indiana appealed the "loop allocation" order issued in that case because the IURC, based on less than a scintilla of evidence (the testimony of one outlier party with little or no other support in the record for the conclusion), found that the cost of the loop should be allocated across all services and recovered from optional services instead of assigning 100% of the cost to basic local service. This non-cost- based approach to universal service directly challenges and contradicts the FCC's access reform process and other cost-based approaches designed to eliminate subsidies. Every other party to the proceeding opposed that outcome, and each of the other large ILECs in Indiana (Sprint and GTE) also appealed the order. As with all the other appeals taken by Ameritech Indiana since the 1996 Act went into effect, there is no stay, and Ameritech Indiana is following the order until the appeal is decided. Indeed, in this regard, Ameritech Indiana is actively participating in a sub-docket initiated by the IURC to assess Ameritech Indiana's compliance with the universal service orders.[6]

The IURC's discussion of recent developments in the Section 254 proceeding is similarly incomplete, as it omits several relevant facts. Most importantly, it implies that the IURC's February 19, 1999 docket entry in the subdocket sought information relating only to Ameritech Indiana's compliance with Section 254(k), when, in fact, the IURC requested substantial additional information not related to Section 254(k). Ameritech Indiana was originally given just over 60 days to complete cost studies for all universal services and submit substantial additional information, including material related to the question of confiscation.[7] Ameritech

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[6] The IURC's reference to "40875-S1" is incorrect - the docket is "40785-S1".

[7] *See, e.g.*, Docket Entry, Cause No. 40785-S1, Exhibit A thereto (IURC 2/19/99); Second Prehearing Conference Order, Cause No. 40785-S1, Exhibit A thereto (IURC 2/19/99). The IURC did extend the time for presenting cost

(continued...)

Indiana petitioned for reconsideration (see Exhibit 4), but also submitted its cost studies. On May 12, the IURC issued a docket entry requiring additional clarification and supplemental information. That docket entry did not reject the cost studies. Ameritech Indiana filed supplemental testimony on June 14, 1999, addressing the IURC's questions.

On July 6, 1999, the IURC issued another docket entry related to Ameritech Indiana's supplemental testimony filing. Again, this latest docket entry did not reject the cost studies, but found that Ameritech Indiana's supplemental response to one of four of the cost study requirement questions outlined in the May 12 docket entry was still deficient. The July 6 docket entry provides additional instructions to Ameritech Indiana in order to answer this question and directs Ameritech Indiana to file this information by September 1, 1999. With regard to the subject of confiscation, the IURC's May 12 docket entry stated that the Commission was unclear as to the direction Ameritech Indiana intended to take regarding its confiscation claim. The July 6 docket entry acknowledges that Ameritech Indiana's supplemental filing clarifies that Ameritech Indiana is not making a confiscation claim, and the IURC therefore finds that it will not consider any potential confiscation claim at this time.

C. Disputes Involving Interconnection Agreements

As an initial matter, the suggestion that Ameritech Indiana is using appeals from the interconnection approval process to delay anything is ludicrous. Only four of the more than sixty agreements entered into by Ameritech Indiana have been arbitrated; the remainder were either negotiated or adopted pursuant to Section 252(i) of the 1996 Act. Only two of the arbitrated agreements were subsequently appealed to federal court by Ameritech. Moreover, no stay was sought in any of the

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[7] (...continued)
studies an additional 28 days to April 29, 1999. *See* Docket Entry, Cause No. 40785-S1 (IURC 3/24/99).

interconnection appeals, including the AT&T case repeatedly cited by the IURC, and Ameritech Indiana performed under each of those agreements during and after the running of the appeals. In any event, the Commission has refused to consider such disputes in other merger proceedings, let alone find that they affect the transferee's qualifications,[8] and it should decline to do so here.

Similarly, the IURC's apparent claim that Ameritech Indiana is a tough negotiator was precisely the type of criticism considered and dismissed by the Commission in its approval of the SBC/Telesis merger, where the Commission concluded that "each individual act alleged by AT&T and ICG and admitted by applicants consists of either constitutionally protected free speech or business conduct that is legally permissible."[9] This conclusion applies with equal force in the

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[8] Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from; Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc. Transferee, Memorandum Opinion and Order, 13 FCC Rcd 21292, ¶ 29 (1998) ("SBC/SNET"); see also, Applications of Craig O. McCaw and American Tel. & Tel. Co., Memorandum Opinion and Order, 9 FCC Rcd 5836, ¶¶ 70, 86 (1994) ("AT&T/McCaw"); Applications of NYNEX Corp. and Bell Atl. Corp. for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶ 210 (1997) ("BA/NYNEX"); Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., Memorandum Opinion and Order, 13 FCC Rcd 18025 ¶ 216 (1998) ("MCI/WorldCom") ("an unresolved private contractual dispute . . . is not a sufficient basis to deny the merger as contrary to the public interest").

[9] SBC/Telesis ¶ 37 n.82. *See also Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*, 627 F.2d 919, 927 (9th Cir. 1980), *cert. denied*, 450 U.S. 921 (1981), *quoted with approval in Los Angeles Land Co. v. Brunswick Corp.*, 6 F.3d

(continued...)

instant proceeding. None of the IURC allegations concerning Ameritech Indiana's negotiating positions demonstrates anything to the contrary.

The IURC focuses on Golden Harbor's MFN adoption of the AT&T agreement under Section 252(i) (Comments at 6), but it fails to note that Golden Harbor delayed reaching agreement because it refused to accept the same termination date as the AT&T agreement that it was adopting. The IURC ultimately agreed with Ameritech Indiana that the termination date for the Golden Harbor agreement should be the same as the termination date of the AT&T agreement being adopted. In any event, the Golden Harbor case was unique because prior to that case the IURC's process for Section 252(i) MFN adoptions had not been clearly articulated and had not necessarily been followed by the agency. At least three prior MFN adoptions – those by LCI, MFS Intelenet and Focal -- had been approved under a different process. Finally, Ameritech Indiana believes that the IURC's "new" process first followed in Golden Harbor does not comport with federal law in that it fails to allow Ameritech Indiana the opportunity to prove that an MFN adoption is neither technically nor economically feasible, as required by 47 CFR § 51.809 and the Supreme Court's *Iowa Utilities Board* decision.[10]

II. The IURC Understates the Extent and Significance of the Competition for Local Telephone Service That Ameritech Indiana Faces

The IURC also complains about the allegedly limited extent of competition faced by Ameritech Indiana in the Indiana local exchange market. Comments at 6-12. The IURC's concern is misplaced. So long as Ameritech

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9 (...continued)
1422, 1427 (9th Cir. 1993), *cert. denied*, 510 U.S. 1197 (1994); *Northeastern Tel. Co. v. AT&T*, 651 F.2d 76, 79 (2d Cir. 1981), *cert. denied* 455 U.S. 943 (1982).

10 *AT&T v. Iowa Utilities Board*, 119 S.Ct. 721 (1999).

Indiana is complying with the requirements of Section 251, and there is no evidence that it is not, then the state of competition is beyond its control.

Moreover, the IURC's estimation of the extent of competition in the Indiana local exchange market is both outdated and based on an overly narrow view of what constitutes competition. The IURC's analysis only recognizes UNE and resale line loss as competition, thus ignoring even such basic measures as facilities-based competition by CLECs. Comments at 7-12. However, as both the Commission and the Department of Justice have recognized, such a constricted analysis does not provide an accurate picture of the competitive environment in Indiana or any other state.[11] In addition, the IURC's analysis is based largely on 1997 and 1998 data and ignores more recent trends in the competitive local exchange market.

Indiana is now experiencing further exponential growth in resale, UNE loops, bypass, total competitive lines, switch placement, EOI trunks and competitive NXX assignment. In addition, several hundred thousand Ameritech Indiana customers purchase intraLATA toll services, as well as other local and intraLATA services such as data, directory assistance, operator services, 800 service, Centrex and pay phone services, from other carriers. The actual state of competition in Indiana is well documented in the rebuttal testimony of Dr. Robert Harris, which was filed with the IURC June 25, 1999 and is attached as Exhibit 5 hereto. It demonstrates that when all forms of competition, including UNEs, resale, CLEC buildouts and customer bypass, are taken into account, Indiana is experiencing robust and rapidly growing local exchange competition.

While the levels of competitive activity appear to be higher in the other Ameritech states, this results from the choices of competitors, not the actions of

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[11] See, e.g., Application of Ameritech Michigan Pursuant to Section 271 To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997); and the Evaluation of the Department of Justice, CC Docket No. 97-1137 (filed June 25, 1997).

Ameritech Indiana. Ameritech implements the same policies, interconnection agreements, collocation agreements, DA/OS services, right-of-way policies, number portability systems and OSS systems for resale, UNEs or interconnection, in Indiana as in Illinois, Michigan and the other Ameritech states which currently have more local competition. The same wholesale account managers and product managers serve the same CLECs, regardless of which Ameritech state they choose to serve. The same service centers serve CLECs in all five Ameritech states, using the same practices. The same teams represented Ameritech in interconnection agreement negotiations in all five states. In short, there are no Indiana-specific competition policies.

While the IURC may not be satisfied with the pace of the increase in competition, it cannot blame Ameritech Indiana. For example, there is a much higher level of competition in the business market than the residential market in Indiana. The reason is obvious: Indiana has among the lowest retail residential local exchange rates in the country. With rates for a residential local line, including local usage, as low as $10 per month, it is hardly surprising that few CLECs have entered the Indiana residential market. If there is less competitive activity, then it is not Ameritech but the CLECs, that have adopted different business strategies and efforts in the different states.[12]

Nonetheless, in our Voluntary Commitment filed with the IURC June 25, 1999, SBC and Ameritech indicated our willingness to take that extra step and commit to major competitive actions in order to induce competitors to enter the Indiana local market, especially the residential market. See Exhibit 6. These

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[12] For example, when AT&T announced its target of 25% local exchange market share for its Time Warner partnership and 30% for its Media One purchase in the next five years, it did not tell the stock analysts that it would reach these levels everywhere except Indiana or the Ameritech region. Its business decisions, are its own, as are those of MCI WorldCom and the hundreds of other CLECs.

commitments will alleviate any reasonable concern that the IURC may have about the impact of the proposed transaction on local competition. The commitments are wide-ranging, but they provide special attention to CLECs who wish to offer competitive services in the residential market. For example, we are prepared to commit to an option to implement discount programs for CLECs who will offer residential local service in competition with Ameritech Indiana. We also agree to improve Ameritech Indiana's OSS and to implement robust performance measurements, standards/benchmarks, and substantial remedies in connection with Ameritech Indiana's provision of OSS. The Voluntary Commitment also provides for an improved dispute resolution process for resolving operational issues with CLECs.

All CLECs that want to compete in Indiana will benefit from the Voluntary Commitment, and consumers stand to benefit most of all. In sum, Ameritech is highly confident that local competition, including residential competition, will continue to grow over the next several years in Indiana and all the Ameritech states. To back up our confidence, we are prepared to accept a significant penalty if, for whatever reason, competition fails to develop. Finally, the Voluntary Commitment will be supplemented by the conditions recently negotiated with the staff of this Commission.

III. The Status of Ameritech Indiana's Deployment of Broadband Capabilities In Indiana is Not An Issue For This Proceeding

The IURC is also critical of Ameritech Indiana because it does not currently deploy xDSL technology. Comments at 12-13. Ameritech Indiana's affiliate, AADS, is prepared to deploy that and other broadband technologies once the pending regulatory issues are decided in the Commission's Section 706 proceeding.[13] In any event, the status of Ameritech Indiana's deployment of xDSL is not an

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[13] See, Deployment of Wireline Services Offering Advanced Telecommunica-

(continued...)

issue that is in any way germane to this merger proceeding. Rather, as with other issues raised by the IURC, the public interest would be better served if this issue is dealt with in the context of the more focused Section 706 proceeding, which is addressing issues related to the deployment of xDSL and other broadband capabilities in all 50 states.[14]

IV. The Alleged Service Quality Problems Are Outside The Scope Of This Proceeding

The IURC also provides certain information which it apparently believes demonstrates that Ameritech Indiana provides less than adequate local exchange service. Comments at 14-15. In the first instance, the issue of service quality is outside the scope of this proceeding. As the Commission has recognized, state commissions can establish service quality benchmarks for intrastate service where they deem it appropriate, and the state commissions are the appropriate forums

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[13] (...continued)
tions Capability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147 (March 31, 1999). The IURC's suggestion (Comments at 13) that Ameritech Indiana chooses not to deploy xDSL for fear of cannibalizing the revenue stream from selling second lines does not withstand simple mathematical analysis. Two access lines at $13 each would bring in $26 per month, less than half the revenue that xDSL would provide at $49.99 per month. Further, the deliberate rollout of xDSL lines in Indiana is not limited to Ameritech Indiana.

[14] See SBC/SNET ¶ 29; AT&T/McCaw ¶ 70, 86.

for dealing with such issues.[15] Accordingly, these state issues are not appropriate for consideration by the FCC in the context of this merger application.[16]

In any event, the data in the Comments hardly suggests that there are major problems with Ameritech's service quality in Indiana. As the IURC admits, "[i]n most cases, Ameritech Indiana complied with the [IURC's] service standards ..." Comments at 14. Faced with this state of affairs, the IURC resorts to citing a potpourri of statistics culled at random from the Commission's ARMIS reports and surveys by J. D. Power and Associates in an attempt to demonstrate alleged shortcomings in Ameritech Indiana's service.[17] For example, rather than acknowledging those service categories where Ameritech Indiana's service is better than that of GTE

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15 See Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee, Joint Opposition of SBC Communications and Ameritech Corporation to Petitions to Deny and Reply to Comments at Exhibit A, page 7, CC Docket 98-141 (November 16, 1998); SBC/SNET, ¶ 38, 63; BA/NYNEX ¶ 210 (concluding that review of performance measurement objectives is best addressed in ongoing rulemaking proceedings).

16 *See Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375-378 (1986). In any event, even the IURC concedes that Ameritech Indiana has consistently met eight of the nine service quality standards set forth in the Indiana Administrative Code. Comments at 14. While the IURC criticizes Ameritech Indiana for failing to meet an alleged "out-of-service over 24 hours" standard, there is in fact no such standard in the Indiana Administrative Code.

17 Comments at 3 and 15-16. It should be noted that there is a benchmark for only one of the ARMIS categories discussed by the IURC – average installation interval for business customers – and Ameritech Indiana has consistently exceeded that benchmark.

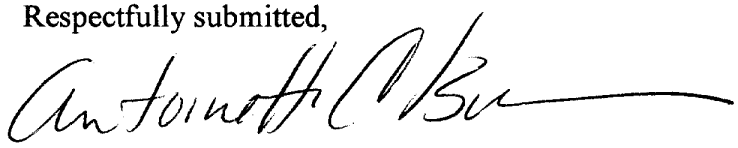
or Sprint, the IURC instead compares the service levels to Ameritech's service in other states. The IURC also ignores 1998 and 1999 results when they are better than 1997 data. No amount of statistical manipulation can change the basic reality. Even in toto, these isolated facts do not demonstrate that Ameritech Indiana "has significant problems with quality of service," much less that the quality of service is germane to the Commission's inquiry in this proceeding.

Finally, various sections of the Voluntary Commitment and certain of the conditions negotiated with the Commission's staff directly address any concerns about the combined SBC/Ameritech commitment to service quality. See, e.g., Exhibit 6, Section IV (five points of service quality commitment and the $10 million annual incentive to meet such commitments). Moreover, Ameritech Indiana will be working diligently to adopt "best practices" from throughout the SBC and Ameritech regions to meet these service quality commitments.

Conclusion

Nothing in the IURC's submission should affect either the Commission's approval of this transaction or its decision as to whether or how to condition that approval.

Respectfully submitted,



Antoinette Cook Bush
Counsel to Ameritech Corporation

cc: Robert Atkinson
Thomas Krattenmaker
Michelle Carey
William Dever

Exhibit 1

ublic Service Co. of Indiana, Inc., App. 3 Dist. 979, 393 N.E.2d 776, [main volume] 181 Ind.App.

request. Hidden Valley Lake Property Owners Ass'n v. HVL Utilities, Inc., App. 4 Dist.1983, 445 N.E.2d 575.

1-3-5 Service of papers

Sec. 5. A copy of any assignment of errors or of cross-errors filed in the court of appeals shall be served by mail, on or before the date of such filing, upon all parties or their attorneys of record as shown by the commission record filed. Copies of briefs shall be served, by mail, upon only the attorney general and those parties or their attorneys of record who have filed an appearance or assignment of errors with the clerk of the supreme court.

As amended by P.L.3-1989, SEC.53.

Historical and Statutory Notes

1989 Legislation

P.L.3-1989, Sec.53, emerg. eff. May 5, 1989, made corrective changes.

1-3-6 Presumption; rates, collection pending appeal

Sec. 6. All rules, practices, installations, and services prescribed, approved, or required by the commission shall be in force and shall be prima facie reasonable unless finally found otherwise by the court of appeals or by the supreme court if the cause is transferred to and decided by that court. However, pending the appeal as in this chapter provided, any municipally owned utility, public utility, rural electric membership corporation, or rural telephone cooperative association whose rate or rates are affected by the decision, ruling, or order appealed from shall have the right to collect the rate or rates as fixed by said decision, ruling, or order, or the former rate, whichever is higher in amount, and such municipally owned utility, public utility, corporation, or association shall refund the difference to each consumer or contract customer if such difference be not sustained upon appeal. However, pending the appeal as in this chapter provided, the court of appeals, upon good cause shown by verified petition, may authorize and permit, but not require, any common or contract carrier whose rate or rates are affected by the decision, ruling, or order appealed from, to collect the rate or rates published and in effect or the rate or rates sought to be put into effect, immediately prior to the commencement of the proceeding before the commission, subject to such provisions for bond or escrow as the court shall provide to protect the interest of all parties of record before the court.

As amended by P.L.384-1987(ss), SEC.8.

Historical and Statutory Notes

1987 Legislation

P.L.384-1987(ss), Sec.8, emerg. eff. retroactive to July 1, 1986.

Notes of Decisions

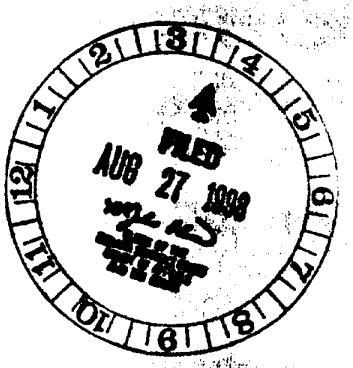
In general

Electric company was entitled to stay of rates pending appeal only during first generation appeal, not after rates had been declared unlawful by Supreme Court. Northern Indiana Public Service Co. v. Citizens Action Coalition of Indiana, Inc., 1986, 493 N.E.2d 762.

Exhibit 2

IN THE COURT OF APPEALS OF INDIANA

NO. 93A02-9801-EX-22



INDIANA BELL TELEPHONE COMPANY, INCORPORATED d/b/a AMERITECH INDIANA, Appellant, v. INDIANA UTILITY REGULATORY COMMISSION, OFFICE OF UTILITY CONSUMER COUNSELOR, SMITHVILLE TELEPHONE COMPANY, INC., TCG INDIANAPOLIS, INDIANA CABLE TELECOMMUNICATIONS ASSOCIATION, INC., AT&T COMMUNICATIONS OF INDIANA, INC., WORLDCOM, INC. d/b/a LDDS WORLDCOM, MCI TELECOMMUNICATIONS CORPORATION, SPRINT COMMUNICATIONS COMPANY, L.P., UNITED TELEPHONE COMPANY OF INDIANA, UNITED SENIOR ACTION OF INDIANA, INC., CITIZENS ACTION COALITION OF INDIANA, INC., AMERICAN ASSOCIATION OF RETIRED PERSONS, INC., SHARED TECHNOLOGIES FAIRCHILD TELECOM, INC., LCI INTERNATIONAL, INC., and TIME WARNER COMMUNICATIONS OF INDIANA, L.P., Appellees.	Appeal from the Indiana Utility Regulatory Commission IURC No. 40849 Hon. William D. McCarty, Chairman Hon. Mary Jo Huffman Hon. G. Richard Klein Hon. Camie Swanson-Hull Hon. David Ziegner Commissioners

BRIEF OF APPELLANT INDIANA BELL TELEPHONE COMPANY, INCORPORATED d/b/a AMERITECH INDIANA

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